IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

CRL.A.No. 1610 of 2003()

CC.516/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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APPELLANT: COMPLAINANT

T.P.MAMMU, THAYILAKANDI PUTHIYAPURAYIL
MILL ROAD, VALAPATTANAM, KANNUR DISTRICT.

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENTS: RESPONDENT/ACCUSED

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1. K.RAJAN, S/O. CHEKKUTTY,
KEERIPOYIL HOUSE, MAMPETTA, P.O.MUKKAM,
KOZHIKODE DISTRICT.

2. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.AVM.SALAHUDIN
PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 1610 of 2003

Dated this the 19th March, 2007.

J U D G M E N T

The complainant in C.C.No.516 of 2001, on the file of the Judicial First Class Magistrate Court-II, Kannur, is the appellant. After appreciating the evidence which consists of PW.1, the complainant, together with 8 documents on the side of the complainant and 4 documents on the side of the respondent, accused, the lower court found the accused not guilty, and, therefore, acquitted him of the offence under Section 138 of the Negotiable Instruments Act, in short 'the Act'. Hence, this appeal.

2. The brief facts of the case is that Ext.P1 cheque was issued for an amount of Rs.40,000/= on 3.8.2000. It was dishonoured and despite demand, the amount was not settled. Hence, the complaint was preferred. Though the first respondent did not enter the box, he relied on Exts.D1 to D4, as well as the evidence brought out through PW.1, as narrated in Ext.P7 reply notice, that he borrowed an amount of Rs.20,000/= from the appellant, without any interest. However, according to the accused, the appellant, later on, demanded

the interest as well. On negotiation, it was fixed at 21% per annum. The first respondent was paying the interest very regularly through different cheques. After about 4 years, the appellant has produced Ext.P1 cheque, and proceeded under Section 138 of the Act. From the circumstances of the case, the lower court came to the conclusion that the case put forward by the first respondent, accused, is more probable than the allegations made by the appellant. That resulted in the acquittal of the accused.

3. Counsel appearing for the appellant, however, submits that Ext.P1 cheque was issued to pay back the amount stated therein. The other cheques which had been issued by the first respondent, accused, were in relation to the earlier transaction, and, therefore, that has got no connection with Ext.P1 cheque.

4. Counsel appearing for the first respondent, accused, contend that Ext.P1 cheque was given as a security, at the time of receipt of Rs.20,000/=, and even after receiving the interest of Rs.20,000/=, Ext.P1 cheque has been acted upon, after filling up every details in Ext.P1 cheque, although the signature is that of the first respondent. I agree with the principle that the case of the accused

could be discerned as per the principle of Preponderance of Probabilities. It is not necessary that he should adduce direct evidence. Circumstances available from the facts of the case are fully sufficient to conclude that whether that would amount to rebuttal under Sections 118 and 139 of the Act.

5. In the case at hand, although the cheque leaf was issued in relation to the transactions between the parties, prior in time, it is insufficient to come to a conclusion that it was issued as security. Respondent also has adduced further evidence to show that it was issued not on the date mentioned in Ext.P1 cheque, without any date, prior to the other transactions, with which the parties were connected, as stated in Ext.P7 reply notice. Therefore, in order to enable both parties to adduce further evidence, I set aside the impugned order, dated 29.10.2002, and restore C.C.No.516/2001, to the file of the Judicial First Class Magistrate Court-II, Kannur.

6. The parties shall appear before the court below on 25.4.2007.

7. The learned Magistrate shall dispose of the matter, as per the law, after giving an opportunity for both sides, to adduce further evidence, if they are so advised.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.